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2   SUPREME COURT OF THE STATE OF NEW YORK
        COUNTY OF SUFFOLK: PART 48
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4   IN RE: OPIOID LITIGATION

5
                                    INDEX NO.:400000/2017
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7
                                    August 19, 2020
8   Central Islip, New York

9
                       MINUTES OF FRYE HEARING
10   (Testimony of James Rafalski

11   B E F O R E: HON. JERRY GARGUILO
                            Supreme Court Justice
12
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EXHIBIT 4

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2   think any of the news websites like the Washington

3   Post are using our data, that's correct.

4   Q.   And just so it's clear, and I apologize

5   for being redundant, the processing, the validating,

6   the augmenting or as you used I think you said

7   sometimes cleaning up the ARCOS data, you utilized

8   generally accepted practices? They would be

9   considered, you know, a consensus would say that was

10   the processes that should be followed, and they were

11   reliable, were they not?

12   A   Yes.

13   Q.   And to your knowledge, would you know,

14   have any of the Defendants actually utilized your

15   process, validated and augmented ARCOS transactional

16   data in the work they did in this case, having read

17   any of their opinions or reports of their experts?

18   A   I believe they have, yes. I believe

19   they accept the results of the first two steps that

20   we've been discussing here as being reliable.

21   Q.   Now, Dr. McCann, in terms of the

22   summarizing shipments in the ARCOS data, in that

23   step of the processes, did you utilize generally

24   accepted methodology in your field?

25   A   Yes.

2   Q.   And on the third part, it says, Report

3   the algorithms -- report the results of applying

4   certain algorithms to the ARCOS data. What does

5   that mean, just generally speaking, because we're

6   going to get into that in a little bit more detail

7   to discuss your methodology?

8   A   Well, after the data has been processed

9   and largely limited to New York State, first, these

10   two counties, Nassau and Suffolk, but more broadly

11   New York State, there is some national data that is

12   used, but primarily data from shipments to New York

13   State, we then narrowed the focus of the data to

14   shipments to pharmacies and identified where those

15   shipments were coming from, which distributors were

16   shipping to the pharmacies.

17   Once the data has been narrowed to that

18   -- those subsets, shipments from primarily

19   distributors to pharmacies, we then applied formulas

20   that would identify when a shipment exceeded some

21   threshold and would mark that.

22   We call that identified or flagged, but

23   think of it as just marking that shipment and

24   subsequent shipments. So it's all done with a

25   computer. It's not done visually. It's done with

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2   computer codes, but basically what it's doing, what

3   the algorithm is doing is taking a subset of that

4   ARCOS data and further subsetting that, what I call

5   flagging or identifying certain transactions from

6   manufacturers and distributors to pharmacies.

7   Q.   And this work that you described in

8   applying this or doing this assignment one, two and

9   three -- I'm not going to repeat them all -- did you

10   do all that yourself?

11   A   Well, no. I have a staff that supports

12   me.

13   Q.   I don't need you to tell us all the

14   staff, but generally speaking, give us a brief

15   rundown of the key people and their level of

16   expertise in crunching data of this magnitude.

17   A   Well, the two primary people working on

18   this with me are both math Ph.D.s, Mike Yan and

19   Chuan Qin. So C-H-U-A-N is his first name, and

20   Q-I-N is his last name. The two of them have math

21   Ph.D.s.

22   Mike has worked for me for nine years,

23   and Chuan has worked for me for three or four years.

24   And then working under them -- so they would be the

25   people who would have primarily done the first step,

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 1                    Direct/Dr. McCann                    57

 2              We'll double check it.

 3                   THE COURT:  If it wasn't for mistakes,

 4              none of us would have jobs.

 5                   MR. SHKOLNIK:  Thank you.

 6    BY MR. SHKOLNIK:

 7              Q.   Now, the Judge mentioned a very

 8    important point, the reliability of the data and the

 9    work you did.

10                   Could you talk to us about that a little

11    bit further?  How do you know that the crunching and

12    the cleaning or -- I'm going to use your

13    phraseology.  I don't want to use the wrong words.

14                   THE COURT:  I'm okay with crunching.

15    BY MR. SHKOLNIK:

16              Q.   Crunching or validating.  How do we know

17    that what you did was reliable, you know, with what

18    you did, because it was -- you basically crunched a

19    whole bunch of numbers here.

20              A    Yes, well, up to this point in the

21    discussion so that processing and supplementing and

22    validating the data, the crunching of the data and

23    producing summary tables is not disputed by the

24    defense in this case by their expert witnesses or in

25    the submission that I read that addressed the
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 1                    Direct/Dr. McCann                 58
 2    reliability of my work.
 3                 It seems like there is no dispute about
 4    that.  So we've obviously worked very hard in this
 5    data to determine that it is ultimately reliable.
 6                 It's been vetted in the MDL and Summit
 7    and Cuyahoga Counties, and it's been vetted again by
 8    the Defendants in this case.
 9                 So up to this point I don't think that
10    there's any dispute that the data is reliable.
11           Q.   And, in fact, I'm just going to read
12    from a footnote in the motion papers filed, and I
13    believe it was Docket -- I shouldn't say Docket.
14    ECF Docket Number 4421 at page 6 of 29 in footnote
15    number 6 it says, Plaintiffs also asked McCann,
16    Dr. McCann, to offer certain opinions relating to
17    the reliability of the DEA's ARCOS data, which are
18    not addressed in this motion, meaning the Defendants
19    didn't even challenge the reliability of the work
20    you did on the data scrubbing and crunching.  Is
21    that a fair understanding of this?
22           A    Yes.
23           Q.   There's discussion regarding what
24    algorithms are applied that were brought up by the
25    defense in terms of challenging your opinions,
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